

Healthcare Fraud: Doctor Convicted Based On Nurses' Testimony.

The physician was a board-certified internist who owned and operated a solo hematology/oncology practice.

Much of the activity in the office involved outpatient administration of chemo and other drugs by nurses employed by the physician. The fraud charges against the physician stemmed from overbilling for the dosages of the drugs actually administered and billing for office visits where the physician supposedly saw the patients when in fact only a nurse interacted with them.

The physician was convicted on twenty-eight separate counts and sentenced to five years in prison plus more than one million dollars restitution.

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT
January 18, 2012

The US Court of Appeals for the Fourth Circuit upheld the physician's convictions and the sentence imposed.

Nurses testified they accurately recorded the dosages of the drugs they administered to the patients, but the physician went back and changed their chart notes.

The nurses said they were told to split 40,000 unit vials of Procrit, giving 20,000 each to two different patients but recording each patient as having received 40,000 units for which the physician billed Medicare and other insurances.

The nurses also testified there was a standing practice in the office to bill office visits as Level 3, involving contact with the physician, when the patients only came in for an injection from the nurse and never saw the physician.

After Federal subpoenas came in the physician ordered an office-wide audit involving wholesale shredding of patient files, which was where the nurses finally refused to go along. US v. Polin, 2012 WL 130753 (4th Cir., January 18, 2012).

Bedsore: No Negligence Found.

The elderly patient was admitted to the hospital's intensive care unit after she was found at home lying in a pool of blood. She was being cared for at home by her daughter.

Her medical problems included anemia from loss of blood, bladder cancer, acute kidney failure, diabetes and hypertension. She had a history of a stroke which left her unable to talk and partially paralyzed. She did not have decubitus ulcers or bedsores when she was admitted to the hospital.

After discharge following surgery for bladder cancer the family discovered she had bedsores and took her back to the hospital where she died four days later from cardiopulmonary arrest.

The hospital provided expert testimony that bedsores may be unavoidable in patients in this patient's condition, even when entirely appropriate nursing care is provided.

UNITED STATES DISTRICT COURT
MISSISSIPPI
January 9, 2012

The US District Court for the Northern District of Mississippi dismissed the family's lawsuit against the hospital.

The case was dismissed even though the nursing admission assessment in the chart identified the patient as high-risk for problems with skin integrity, the care plan provided that she was to be turned every two hours and the nursing flow charts failed to document she was turned according to the care plan, if at all.

The Court accepted expert testimony submitted by the hospital that bedsores can be unavoidable in a patient like this one with complex medical issues and care needs, even with the best of nursing care.

At the same time there was no expert testimony submitted by the family that substandard nursing care, even if it was responsible for the patient's bedsores, had any cause-and-effect relationship with her death. Jackson v. Oktibbeha County Hosp., 2012 WL 39399 (N.D. Miss., January 9, 2012).

Skilled Nursing: Court Extends Patient's Medicare Eligibility.

The nursing facility resident was notified that Medicare would be terminating his eligibility because his short term and long term physical and occupational therapy goals had been achieved.

Nevertheless his family appealed the decision to the state quality improvement organization and eventually the US District Court for the Eastern District of New York ruled he was eligible for continued skilled nursing coverage through Medicare.

Federal regulations state that if the patient's overall condition would support a finding that recovery and safety can be assured only if the total care is planned, managed and evaluated by technical or professional personnel, it would be appropriate to infer that skilled services are being provided, 42 CFR 409.32(b).

UNITED STATES DISTRICT COURT
NEW YORK
December 9, 2011

During the five-day period in question the patient needed not only to receive personal care in the facility but was also placed back on restorative rehabilitation which included therapeutic exercise and training for transfers, gait, balance, elevation and endurance, the stated goals being that he would be able to ambulate on outdoor surfaces, become independent in car transfers, be able to negotiate up and down curbs and cross a street in the time frame of a stop light.

According to the Court, his stay in the facility while receiving these services would be considered skilled nursing care covered under Medicare Part A rather than just personal care not covered by Medicare. Glick v. Johnson, 2011 WL 6140523 (E.D.N.Y., December 9, 2011).